IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15049 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARUNRASID LALMIYA MALEK

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2003

ORAL JUDGEMENT

1. The petitioner is detained by virtue of an order passed by District Magistrate, Kheda, at Nadiad, on 10th October, 2003, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), on the ground that the petitioner has indulged himself in activities detrimental to the smooth of supply of essential commodity, namely, kerosene.

2. The petitioner has challenged the order of detention on various grounds. However, the learned

Advocate, Mr. Prajapati, appearing for the petitioner has restricted his arguments to non-supply of documents considered by the detaining authority while passing the order of detention, which is required to be supplied pari passu. It is also contended that the document referred to in the index as the order of the Sessions Court granting bail is, in fact, a communication from the Sessions Court to the Police Inspector, Thasra and not the order of the Court. Therefore, there is non-application of mind. He submitted that the order of detention, therefore, would stand vitiated and it may be quashed and set aside.

3. Learned Assistant Government Pleader, Mr.Patel, has opposed this petition. He made an attempt to indicate that page 54 of the compilation supplied to the detenu is the order of the Court, but was not able to hold fast to it when his attention was drawn to the fact that the said document contains only the operative part of the order which is communicated by the office of the Sessions Court.

4. Considering the rival side contentions, what emerges is that, if the detaining authority considered page 54 as order of the Sessions Court, then there is non-application of mind on the part of the detaining authority because that is not the order of the Sessions Court, but only a communication by the office of the Sessions Court of the operative part of the order of bail passed by the Sessions Court. The authority, therefore, cannot be said to have considered the order of the Sessions Court. If the authority had considered the original order of the Sessions Court, then the copy of that order is not supplied to the detenu along with the grounds of detention. Likewise, the application before the Sessions Court for bail is also not supplied. It is a matter of doubt whether that application was before the authority and was considered. If it is so, then the copy ought to have been supplied pari passu with the grounds of detention. If it is not so, then the observation of the authority while recording satisfaction in the grounds of detention is without any basis. Keeping all these aspects in mind, there seems to be substance in the petition.

5. The order of detention would suffer from two vices, namely, (1) non-application of mind and (2) infringement of the detenu's right of making effective representation envisaged under Article 22(5) of the Constitution. The order, therefore, cannot be permitted to s

6. The petition is allowed. The order of detention dated 10th October, 2003, passed by the District Magistrate, Kheda District, at Nadiad, against the petitioner-detenu is hereby quashed and set aside. The detenu be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A. L. DAVE, J.]

gt